There is considerable authority in regard to the purpose and effect of particulars filed pursuant to Order 19, rule 7A of the Rules of the Supreme Court. At page 31 of *Halsbury* (3rd ed.) Vol. 3, the learned commentator has this to say:—

"A party is bound by his pleadings unless he is allowed to amend them, and he is therefore bound by his particulars, which are, in effect, part of the pleadings under which they are delivered."

In *Thomson* v. *Birkley* [2] Watkin Williams J. says:—

"The object of particulars is to prevent surprise, and to limit and particularise events in order that both parties should come to trial fully prepared for the issues."

In *Spedding* v. *Fitzpatrick* [3] Cotton L.J. says:—

"The object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to be taken by surprise."

In *Thorp* v. *Holdsworth* [4] Jessel M.R. says:—

"The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules of Order XIX was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing."

Finally, in *Yorkshire Provident Life Assurance Co.* v. *Gilbert & Rivington* [5] Lindley L.J. says:—

"What is the effect of these particulars? I take it the effect of these particulars is this, that the issues to be tried are limited by these particulars in the first instance. I do not mean to say that leave cannot be obtained to add to the particulars — of course it can; but the moment these particulars are delivered, and until some further order is obtained for the delivery of further particulars, the effect of delivering the particulars is to cut down the matters in question in the action to the particulars."

Therefore, in my opinion, the learned trial judge, in the instant case, had departed from the strict rules of procedure, in deciding the case on an issue not raised in the pleadings and on the assumption of a fact which the appellants were not obliged to call evidence to rebut. The respondent, by his statement of defence and more definitely by the answer to question (b) in the particulars, limited the court's ambit of inquiry into just finding an answer to the question whether or not before May 30, 1955, Khatijah had acquired an indefeasible title against the true owner by adverse possession. The trial judge having held that Khatijah had not acquired such a title, should have forthwith decreed the suit in favour of the appellants.

This appeal must, therefore, be allowed with costs to the appellants here as well as in court below.

Azmi C.J. (Malaya) concurred.

Appeal allowed.

Solicitors: *S. Thillaimuthu; Ong Huck Lim & Co.*

PUBLIC PROSECUTOR v. PAGHUTHEEN

[R.Cr.J. (Ong Hock Sim J.) September 17, 1968]
[Penang — Criminal Revision No. 6 of 1968]

Criminal Law and Procedure — Plea of guilty by accused — Magistrate not recording facts on which sentence based.

Road Traffic — Charge of carrying goods without carriers licence — Insurance offence — Plea of guilty by accused — Disqualification — Whether justified — Road Traffic Ordinance, 1958, ss. 74(1), 98(1) & (2).

The defendant was convicted on his plea of guilty of offences under sections 74(1) and 98(1) of the Road Traffic Ordinance and fined $100 and $30 respectively and disqualified from driving for a period of one year. On revision it was found that the magistrate had not recorded any facts for the purposes of assessing sentence.

Held: (1) it was the duty of magistrates where an accused had pleaded guilty to record some evidence upon which the sentence may be based and upon which on appeal the adequacy or otherwise of the sentence could be reviewed;

(2) in this case as the defendant was using a motor vehicle for removing goods from a disabled motor vehicle to a place of safety, the case was covered by section 98(2) of the said Ordinance and the convictions and order of disqualification should be quashed and the fines refunded.

Cases referred to:—

(1) *Public Prosecutor* v. *Cheah Tin* [1939] M.L.J. 266.

(2) *Lee Yu Fah* v. *Public Prosecutor* [1937] M.L.J. 179.

CRIMINAL REVISION.

Haji Suhaimi bin Dato' Haji Kamaruddin (Deputy Public Prosecutor) for the Public Prosecutor.

Respondent in person.

Ong Hock Sim J. (delivering oral judgment): This defendant was convicted on his own plea of guilty to two charges:—

1st Charge

"That you on 26.2.68 at about 3.40 p.m. at Bayan Lepas, Penang did use motor car PA. 1317 for the carriage of bread without a carrier's licence and that you have thereby committed an offence punishable under section 98(1) of the Road Traffic Ordinance No. 49 of 1958."

2nd Charge

"That you on the same date, time and place did use the said motor car without there being in force in relation to the use of such motor vehicle such a policy of insurance or such security in respect of third party risks and that you have thereby committed an offence under section 74(1) punishable under section 74(2) of the Road Traffic Ordinance No. 49 of 1958."

He was fined $30 on the first charge, $100 on the second charge and further disqualified from holding a driving licence for a period of 1 year.

He wrote a letter to me on the 10th September, 1968, setting out facts in connection with this offence. I tried to obtain the police enquiry paper in connection with this case. No police enquiry paper had been done by the police, despite the fact that application for a summons was applied for, according to the record, on the 29th July, 1968, over 5½ months after the offence. I could find no facts recorded by the magistrate for the purpose of assessing sentence. In *Public Prosecutor* v. *Chean Tin*,[1] Terrell Ag.C.J. held that it is the duty of magistrates, where an accused has pleaded guilty to record some evidence upon which the sentence may be based and upon which, on appeal, the adequacy or otherwise of such sentence can be reviewed. If that had been done, the unusual circumstances in which this offence had been committed would have come to light. As it is, with the co-operation of the learned deputy public prosecutor, I was able to cause investigation to be made to verify the facts which have been submitted by him for my consideration namely, the defendant was a paid driver employed by a bakery which possessed a van for the carriage of its own goods. He was in fact conveying loaves of bread in this van when the van broke down just outside Bayan Lepas. He therefore phoned to his manager and thereafter to his usual motor service firm who found that the gear box had gone completely out and the van had therefore to be towed back to town. In the circumstances, he did not know what to do with the loaves of bread, and his employer got him to take the loaves of bread in his car for delivery to Bayan Lepas. He was unfortunately caught by the police and accordingly charged. He has now lost his job because he has been disqualified from holding a driving licence for 12 months as a result of a conviction under section 74(2). I find his case is covered by section 98(2). Under this subsection, section 98(1), the offence of using motor vehicle without there being in force a valid carrier's licence, shall not apply to the use of a motor vehicle for removing goods from a disabled motor vehicle and removing such goods to a place of safety.

Bearing in mind the case of *Lee Yu Fah* v. *Public Prosecutor* [2] which decided that where an accused person has been convicted by the magistrate on his own plea of guilty and is precluded from appealing against the legality of the sentence under section 305 of the States Code, the appellate court can always in a proper case exercise its powers of revision, I decided to revise this case. I find in the circumstances, justice is best done if I quash the conviction on these charges and order the fines to be refunded. I also quash the order of disqualification for 12 months. The licence which is now retained by the magistrate's court should be returned to him.

Order accordingly.

Conviction and order of disqualification quashed.

SHAMSUDIN v. YAP CHOH TEH & ANOR.

[O.C.J. (Gill J.) September 19, 1968]
[Malacca — Civil Suit No. 96 of 1963]

Negligence — Blasting operations — Police constable present at place of blasting operations in pursuance of public duty — Invitee — Liability of person carrying out blasting operations.

Damages — Injury to eye as a result of blasting operations — Loss of sight of right eye — Loss of earnings — Chances of future promotion.

The plaintiff sued the defendants for damages arising out of an injury to his right eye which was caused by his being struck by a splinter of stone as a result of blasting operations at a quarry in Malacca. The plaintiff was a police constable who assisted the police escort party in transferring the explosives from the police station to the quarry. The first defendant was the contractor of the quarry who had a licence to possess explosives for the purposes of carrying out blasting operations and the second defendant was the first defendant's servant employed as a *kepala* at the quarry. The plaintiff's evidence was that he emerged from behind a rubber tree where he was stationed after the *kepala* and a police corporal had signalled the all clear and was struck in the eye by a splinter of stone following a further explosion.

Held: (1) it was clear from the evidence that the *kepala* as the shot-firer was negligent in giving the all clear signal without making certain that there were not going to be any further explosions. The first defendant was therefore liable in damages for his servant's negligence;

(2) the plaintiff was present at the quarry in pursuance of a public duty and consequently was in the same position as that of an invitee and it was the duty of the first defendant as an invitor to take reasonable care for the safety of the plaintiff;

(3) general damages should be fixed at $12,500 for the loss of one eye and a further $6,000 for loss of earnings.

Cases referred to:—

(1) *Steward* v. *North Metropolitan Tramways Co.* (1886), 16 Q.B.D. 556.

(2) *Read* v. *J. Lyons & Co. Ltd.* [1947] A.C. 156, 165.

(3) *Lindon Graving Dock Co. Ltd.* v. *Horton* [1951] A.C. 737, 784.

(4) *Mitchell* v. *National Coal Board* [1957] C.L.Y. 2193.

CIVIL SUIT.

Tara Singh Sidhu (*John Ang* with him) for the plaintiff.

G. R. T. Chelvam for the defendants.